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No. 85-794

IN THE

Supreme Court Of The United States

October Term, 1985

PREUIT & MAULDIN, a partnership;
E. F. MAULDIN, individually and as Executor
of the estate of Leonard Preuit, deceased;
and PREUIT MAULDIN,
Petitioners

vs.

SAMUEL JONES, JR.,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Petitioners' statement of the case is not entirely complete. Accordingly, the respondent is forced to provide his own statement of the case in order for the Court to fully understand the issue presently under consideration.

Respondent, Samuel Jones, Jr., a black citizen of the United States and the State of Alabama, commenced this action against the petitioners, Preuit & Mauldin, a partnership; E. F. Maul-

din, individually and as Executor of the estate of Leonard Preuit, deceased; and Preuit Mauldin, by filing a complaint in the United States District Court for the Northern District of Alabama on February 24, 1984. In his complaint, brought pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1983, respondent alleged that on or about April 8, 1982, the petitioners, acting under color of state law pursuant to Section 35-11-111 of the Alabama Code, 1975, obtained three writs of attachment for three International Harvester cotton pickers owned by respondent and caused the Sheriff of Lawrence County, Alabama to seize the three cotton pickers, thereby depriving respondent of the possession and use of his property. Respondent further alleged that the prejudgment seizure of his property without notice and a hearing did not comply with the due process requirements of the Fourteenth Amendment to the Constitution of the United States and that respondent was deprived of his rights, privileges and immunities secured by the Constitution and laws of the United States. Finally, respondent alleged in his complaint that as a proximate result of petitioners' unlawful actions, he not only was deprived of the possession and use of his property, but also incurred substantial expenses in harvesting his cotton crop and was deprived of income he otherwise would have received for harvesting cotton for others. Respondent sought $200,000 in compensatory damages, $200,000 in punitive damages, plus costs. Respondent also demanded a jury trial.

On March 12, 1984, petitioners filed a motion to dismiss on the grounds that the complaint failed to state a claim upon which relief could be granted and that respondent's claim was barred by the applicable statute of limitations. Thereafter, the district court granted petitioners' motion to dismiss on the ground that respondent's claim was barred by the statute of limitations. The court found that the "essential nature" of respondent's claim "is that he sustained damages as a proximate consequence of a denial of 'due process.'" (App. 18). Rejecting respondent's argument that the three-year statute of limitations contained in Section 6-6-148 of the Alabama Code, 1975,

relating to wrongful attachments, applied to the facts in this case, the court held that respondent's claim was barred by the "catch-all" statute of limitations contained in Section 6-2-39 (a) (5) of the Alabama Code, 1975, which at that time provided that "actions for any injury to the person or rights of another not arising from contract and not specifically enumerated in this section" must be commenced within one year. (App. 19-20). The court dismissed the action, and respondent appealed.[1]

The case was submitted for decision in the Eleventh Circuit on April 4, 1985, and on April 17, 1985, this Court rendered its decision in *Wilson v. Garcia,* 105 S.Ct. 1938 (1985). Recognizing this Court's holding in *Wilson* that "§ 1983 claims are best characterized as personal injury actions," and the Court's directive to "select, in each State, the one most appropriate statute of limitations for all § 1983 claims," 105 S.Ct. at 1947-49, the court below proceeded to determine which of two Alabama statute of limitations governing claims for recovery of damages for "personal injury" was the most appropriate statute to be applied to all § 1983 claims in Alabama. (App. 4-5).

The court noted that, because the § 1983 remedy encompasses a broad range of tort analogies, including those sounding in trespass and those sounding in trespass on the case, no one statute of limitations in Alabama governs all such claims.[2] For that reason, the court stated that "[t]he appropriate characterization of Section 1983 personal injury claims must be determined by searching the legislative history of the statute and

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[1]After respondent's notice of appeal was filed, the Alabama Legislature repealed the one-year statute of limitations contained in Section 6-2-39 (a) (5), and extended the relevant limitations period to two years. *See* Act of Jan. 9, 1985, No. 85-39, 1984 Ala. Acts. Presently, "[a]ll actions for any injury to the person or rights of another not arising from contract and not specifically enumerated in this section must be brought within *two* years." *Ala. Code* § 6-2-38 (1) (1985) (emphasis added). (App. 5).

[2]There are other statutes of limitations governing personal injury actions in Alabama, including the two-year limitations period governing wrongful death actions, *Ala. Code* § 6-2-38 (a) (1975), which has been held to be a personal injury action in Alabama. *Harris v. Elliott,* 277 Ala. 421, 171 So.2d 237 (1965).

isolating the particular type of wrong that was most paradigmatic, the one category of wrongs that the legislators intended first and foremost to address. The Supreme Court in *Wilson* made such a determination in order to conclude that Section 1983 claims are personal injury claims rather than general statutory claims falling within a catch-all limitations statute."[3] (App. 8-9). The court then analyzed the legislative history discussed by this Court in *Wilson,* concluding that "[t]he extensive legislative history demonstrates that members of the 42d Congress considered direct acts of violence against black citizens to be the paradigmatic wrong addressed by the new statute. Hence, the essential nature of a Section 1983 claim fits the description of trespass under Alabama law." (App. 10-11). The court held that "federal courts in Alabama will borrow the six-year limitations period as found in *Ala. Code* § 6-2-34 (1) (1975)," which governs "[a]ctions for any trespass to person or liberty." (App. 11). It followed that respondent's claim was timely; consequently the court reversed the judgment of the district court and remanded the case for further proceedings.[4] (App. 11).

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[3]The first sentence in the first full paragraph contained on page 7 of the Appendix, a portion of the Eleventh Circuit's opinion, reads as follows: "The characterization of Section 1983 claims given by the Supreme Court in *Wilson* resembles *an action in trespass on the case.*" That is a printing error. The Eleventh Circuit's opinion reads that "The characterization of Section 1983 claims given by the Supreme Court in *Wilson* resembles an action in *trespass rather than trespass on the case.*" *Jones v. Preuit & Mauldin,* 763 F.2d 1250, 1254 (11th Cir. 1985) (emphasis added).

[4]Petitioners did not assert any alternative basis in the court below for affirming the district court's dismissal of the case. (App. 11 n.5).

REASONS FOR DENYING THE WRIT

Petitioners have failed to present any "special and important reasons" for the issuance of a writ of certiorari. Sup. Ct. Rule 17. Contrary to the assertions in the petition, the decision by the court below is based on sound legal principles and is not in true conflict with any decision of another federal court of appeals or any decision of this Court. The decision below simply does not present any issue of substantial importance warranting consideration by the Court.

A. No True Conflict Exists Among The Circuits Regarding The Most Appropriate Statute Of Limitations To Apply To Section 1983 Claims.

Petitioners argue that the Court should issue a writ of certiorari because there is a conflict in the decisions of the Tenth and Eleventh Circuits regarding the most appropriate statute of limitations to apply to § 1983 claims. Petitioners' argument is totally without merit; there is simply no true conflict in this case.

In selecting the six-year statute of limitations contained in Section 6-2-34(1) of the Alabama Code, 1975, to apply to all § 1983 claims in Alabama, the court below did nothing more than carry out the task allotted to it by this Court in *Wilson v. Garcia*, 105 S.Ct. 1938 (1985); that is, "to select, in *each* State, the one *most appropriate* statute of limitations for all § 1983 claims" brought in that particular state. 105 S.Ct. at 1947 (emphasis added). In *Wilson*, after deciding that "§ 1983 claims are best characterized as personal injury actions," 105 S.Ct. at 1949, it was a relatively simple task under the New Mexico statutory scheme to select the appropriate statute of limitations. A *single* New Mexico statute of limitations applied to "injury to the person or reputation of any person." 105 S.Ct. at 1949, *quoting* N.M.Stat.Ann. § 37-1-8 (1978). The issue before the Eleventh Circuit was different. The issue it faced was: when two different limitations periods governing personal injury

claims are provided by a particular state's statutory scheme, which limitation period will govern a § 1983 action?

It should certainly come as no surprise to petitioners that some states have multiple statutes of limitations governing personal injury claims, while others have only one such statute. For example, in addition to Alabama, Colorado and Mississippi have at least two statutes of limitations governing personal injury actions, *McKay v. Hammock,* 730 F.2d 1367 (10th Cir. 1984) (*en banc*) (Colorado); *Gates v. Spinks,* 771 F.2d 916 (5th Cir. 1985) (Mississippi), while New Mexico, as mentioned above, has only one. *Garcia v. Wilson,* 731 F.2d 640 (10th Cir. 1984) (*en banc*) *aff'd, Wilson v. Garcia,* 105 S.Ct. 1938 (1985).

Furthermore, the diversity among the several states' limitations schemes is strikingly underscored by the fact that the various states having different limitations periods for personal injury sounding in trespass and personal injury sounding in case differ as to which of these is longer. Alabama allows six years for the former and one (two since January, 1985) for the latter, while Colorado and Mississippi provide the opposite, that is, only one year for trespass actions and six years for actions on the case.

What all this means, of course, is that the resulting period of limitations "most appropriate" to § 1983 claims will vary from state to state. As the Court recognized in *Burnett v. Grattan,* 104 S.Ct. 2924 (1984), the length of a limitations period will be influenced by a particular state legislature's determination of several factors, including "(1) the importance of the state claim at issue; (2) the need for repose for potential defendants; (3) considerations of judicial economy; and (4) the relationship of the limitations period to other state policy goals." 104 S.Ct. at 2931. Thus, the "uniformity" sought by petitioners is illusory because the actual operation of this Court's holding in *Wilson v. Garcia, supra,* will depend, in large part, upon the different statutory schemes of the various states. Indeed, the Tenth Circuit in *Garcia v. Wilson,*

supra, stated that "[t]he resulting period of limitations will vary from state to state, depending on state law." 731 F.2d at 651 n.4.

Petitioners also disregard the fact that in *McKay v. Hammock, supra*, the Tenth Circuit declared both personal injury limitations periods in Colorado inappropriate, and applied the three-year residuary statute. 730 F.2d at 1370. Thus, again, no one rule for the selection of state limitations periods can apply with equal force to all states because of the wide diversity in the various statutory schemes.

What, then, are the lower federal courts to do in this multiple-choice selection situation, if not exactly what the Eleventh Circuit did in this case: to select, given the peculiarities of the forum state's limitations scheme, the single most appropriate statute to apply to all § 1983 claims within that particular state. In light of this Court's holding in *Wilson v. Garcia* that the lower federal courts are "to select, in each State, the one most appropriate statute of limitations for all § 1983 claims," it is entirely to be expected, indeed it seems inevitable, that the lower courts will have some diversity of approach in selecting the single most appropriate statute in each state. The Court recognized as much in *Wilson v. Garcia*. Thus, the policy behind the preservation of uniformity in decision in the federal courts upon points of law solvable by federal law has no application in this case.

In *Wilson v. Garcia*, this Court defined the nature of the § 1983 remedy and enunciated the goals of that statute. The Court then allowed the lower federal courts to select, in each state, the limitations period that best furthers those ends. That is exactly what the court below did in this case. The court developed a consistent approach to the question left unanswered in *Wilson* that is easily applied and which has the desired effect of furthering the remedial goals of the Act. The decisions relied upon by petitioners as being in conflict with the decision of the court below are not actually in conflict, because they merely involve filling other gaps under other states' limitations schemes. The body of decisions in the lower courts seeking to

fill in the remaining gaps after *Wilson v. Garcia* is exactly what one would expect in light of the diversity of state limitations schemes, and there is nothing in *Wilson v. Garcia* that precludes the particular approach adopted by the Eleventh Circuit. In fact, the approach adopted by the Eleventh Circuit is entirely consistent with the principles enunciated in *Wilson v. Garcia,* as applied to Alabama's limitations scheme.[5] Accordingly, because there is no true conflict between the decision below and any decision of another federal court of appeals or this Court, the petition should be denied.

B. Because The Application Of The One-Year Statute To The Facts Of This Case Would Be Inconsistent With The Constitution And Laws Of The United States, The Eleventh Circuit Properly Disregarded That Statute.

A § 1983 suit affords redress for "a deprivation of a constitutional right" which "is more serious than a state tort." *Monroe v. Pape,* 365 U.S. 167, 196 (1961) (Harlan, J., concurring). Yet, the application of the one-year statute urged by petitioners would bar this more serious § 1983 suit, but a trespass suit, a suit on an attachment bond, or a common-law action for wrongful attachment, arising out of the same facts, would not be barred. As Justice Rehnquist recognized in his concurring opinion in *Burnett v. Grattan, supra,* "if the state statute of limitations discriminates against federal claims, such that a federal claim would be time-barred, while an equivalent state claim would not, then the state law is inconsistent with federal law." 104 S.Ct. at 2935. *See also Wilson v. Garcia,* 105 S.Ct. at 1947; *Campbell v. Haverhill,* 155 U.S. 610, 615-16 (1895). Accordingly, because application of the now repealed,

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[5]The decision by the court below is also consistent with the federal policy that, when there is a question as to which of two statutes of limitations to apply, the court should apply the longer of the two. *Gillette Dairy, Inc. v. Mallard Mnfg. Corp.,* 707 F.2d 351, 353 (8th Cir. 1983); *Marshall v. Kleppe,* 637 F.2d 1217, 1224 (9th Cir. 1980); *Reid v. Volkswagen of America, Inc.,* 512 F.2d 1294, 1297 (6th Cir. 1975); *Guam Scottish Rite Bodies v. Flores,* 486 F.2d 748, 750 (9th Cir. 1973).

one-year "catch-all" statute to the facts of this case would create an arbitrary result that is inconsistent with federal law, the court below properly disregarded that statute. For this additional reason, this case is not an appropriate one for the Court to exercise its certiorari jurisdiction. *See generally* Sup. Ct. Rule 22.1 (a brief in opposition may disclose "any matter or ground why the cause should not be reviewed by this Court").[6]

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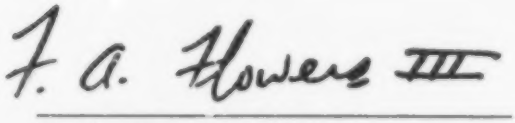
[6]The court below also could have held that the one-year "catch-all" statute repealed by the Alabama Legislature should not be applied in this case on the reasoning that, by repealing that statute, the Alabama Legislature made a value judgment that a one-year limitations period for personal injury claims is too short under present day conditions. *See generally Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 463-64 (1975) ("the length of the period allowed for instituting suit inevitably reflects a 'value judgment' concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting prosecution of stale claims"). This reasoning does not involve a question of retrospective construction of a state statute, but rather a determination of the most appropriate limitation to borrow, which obviously should be the limitation that the present wisdom of the State has set, and not that of a past era, which the State now deems inappropriate to present societal conditions. Thus, if one assumes that a "catch-all" statute should be applied at all, and if the value judgment and wisdom of the Alabama Legislature is to be followed, this action is not barred because it was filed less than two years after respondent's claim arose.

CONCLUSION

In light of the foregoing, this case does not present any issue of substantial importance that merits consideration by the Court. The decision below is not in conflict with any decision of another federal court of appeals or any decision of this Court, and does not otherwise present any "special and important reason" for the issuance of a writ of certiorari. Accordingly, the petition should be denied.

Respectfully submitted,

C. V. Stelzenmuller



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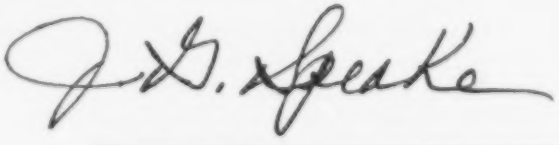

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PROOF OF SERVICE

I, C. V. Stelzenmuller, a member of the Bar of this Court, as counsel of record for respondent herein, Samuel Jones, Jr., hereby certify that three copies of the above and foregoing Brief in Opposition have been served by first-class United States mail, properly addressed and postage prepaid, upon T. Michael Putnam, Esq., Post Office Box 1760, Florence, Alabama 35631, on this 3rd day of December, 1985.

It is also certified that all parties required to be served have been served.

C. V. Stelzenmuller

C. V. Stelzenmuller

Sworn to and subscribed before me
this 3rd day of December, 1985.

Susan S. Turner

Notary Public